Supreme Court, U. S.
FILED
APR 13 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-510

FLINT RIDGE DEVELOPMENT COMPANY, *Petitioner,*

v.

THE SCENIC RIVERS ASSOCIATION OF OKLAHOMA AND THE ILLINOIS RIVER CONSERVATION COUNCIL, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF OF PETITIONER FLINT RIDGE DEVELOPMENT COMPANY

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REPLY BRIEF OF PETITIONER FLINT RIDGE DEVELOPMENT COMPANY

In response to the briefs of the respondents (Scenic Rivers) and amici it is important to state at the outset that one issue which is *not* involved in this case is the general applicability of the National Environmental Policy Act (NEPA) as a whole to the Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (HUD). As a reading of NEPA makes clear, although parts of NEPA, such as § 102(1), do apply to all agency actions, it is equally true that other parts of NEPA, specifically § 102(2)(C), apply only to a more limited group of agency actions, i.e., "major Federal actions significantly affecting the quality of the human environment." The principal issue in this case is whether HUD's checking of a statement of record triggers

the specific requirement in § 102(2)(C) of NEPA that HUD prepare a written environmental impact statement.

I. The Legislative History of § 102(2)(C) of NEPA Does Not Support Scenic Rivers' Claim That an Environmental Impact Statement Is Required for "All Federal Actions Which Affect the Quality of the Human Environment" But Does Show That HUD's Limited Role Under ILSA Is Outside the Reach of That Section.

Scenic Rivers attempts to bring HUD's limited action under the Interstate Land Sales Full Disclosure Act (ILSA) within the ambit of the environmental impact statement requirement of § 102(2)(C) of NEPA by arguing that:

> "The language of the legislative history indicates that Congress intended that the 'action-forcing' provisions of NEPA should apply to *all* Federal actions which affect the quality of the human environment." [1]

This argument fails both on its face and on careful analysis of the legislative history. If Congress meant that an environmental impact statement is required for "all" Federal actions, Congress would have said "all" in § 102(2)(C) of the Act it passed. It didn't; it said "major" Federal actions. No play on the words of the legislative history as contained in Scenic Rivers' Brief at 19-36 can camouflage Scenic Rivers' request that the Court read the word "major" right out of the Act. Moreover, Scenic Rivers conveniently sidesteps the broader question of whether Congress intended that an agency prepare a written environmental impact statement when that agency has no statutory authority over

[1] Resp. Brief at 31 (Emphasis in original).

activities that may significantly affect the quality of the human environment.

Scenic Rivers' argument that "the terms 'major' and 'significantly affecting' seem to have been used more for emphasis rather than as limitations" finds no support in the legislative history of § 102(2)(C).[2] In fact, Congress intended from the beginning to limit the Federal actions to which § 102(2)(C) applies. The first version of § 102(2)(C) covered "proposals for legislation or other *significant* Federal actions affecting the quality of the human environment."[3] The Senate Interior and Insular Affairs Committee substituted without explanation the word "major" for the word "significant" preceding "Federal actions" and added the word "significantly" before the phrase "affecting the quality of the human environment."[4] Congress thus always used "major" or "significant" to describe which actions of Federal agencies would require preparation of an environmental impact statement. There is no indication that these words were merely used for emphasis.

Indeed, the legislative history of NEPA provides examples of the kind of actions Congress had in mind when it required Federal agencies to prepare written environmental impact statements. These examples also show its intention that the words "major" and "sig-

[2] Resp. Brief at 32. Scenic Rivers' distinction between words of "emphasis" and "limitation" raises the question, what does "major" emphasize?

[3] *Hearings on S. 1075, S. 237, and S. 1752 Before the Senate Committee on Interior and Insular Affairs*, 91st Cong., 1st Sess. at 207 (1969) (Emphasis supplied).

[4] S. Rep. No. 91-296, 91st Cong., 1st Sess. 30 (1969).

nificantly" are words of limitation. In the Senate Interior and Insular Affairs Committee Report on NEPA, the Committee described § 102(2)(C) as follows:

> "Each agency which proposes any *major* actions, *such as project proposals, proposals for new legislation, regulations, policy statements, or expansion or revision of ongoing programs,* shall make a determination as to *whether* the proposal would have a significant effect upon the quality of the human environment. *If* the proposal is considered to have such an effect, then the recommendation or report supporting the proposal must include statements by the responsible official of certain findings . . . ."[5]

In the Senate Hearings, Senator Jackson described his intention to require agencies to meet certain environmental requirements for a limited type of Federal agency actions:

> "It seems to me that the policy problem falls into two categories: First, a broad statement of environmental policy that would apply to all of the governmental departments, with the Bureau of the Budget in a position to stipulate that when proposals come over, that they must meet certain environmental policies and standards.
>
> "I think the other area relates to quasi-judicial proceedings *where independent agencies are in a position to grant permits and licenses* for activities that potentially have an enormous impact on the environment. Perhaps we could work out some

[5] S. Rep. No. 91-296, 91st Cong., 1st Sess. 20 (1969) (Emphasis supplied).

> kind of a general statutory provision that would be applicable to all quasi-judicial proceedings."[6]

HUD does not make any *project proposal* regarding the land developments that are the subject of the anti-fraud disclosure document filed under ILSA. HUD also does *not* grant *permits or licenses* for any of the developer's activities that may affect the environment. Furthermore, HUD has no statutory authority over the site selection, planning, funding or construction of the developments. HUD's checking of statements of record under ILSA is so qualitatively different from the limited types of actions Congress had in mind to be covered by a written environmental impact statement, that its action cannot be considered major Federal action significantly affecting the environment.

II. Since Congress in ILSA Did Not Delegate HUD Any Authority Over Land Development Activities Nor Any Power To Block Access to Interstate Commerce If the Disclosure Document Is Complete and Accurate on Its Face, HUD's Action Is Not a Major Federal Action Requiring An Environmental Impact Statement Under § 102(2)(C) of NEPA.

Scenic Rivers argues that HUD undertook a major Federal action because "[w]hen an agency exercises jurisdiction based upon the plenary power of Congress to act under Constitutional authority, such action is per se major federal action."[7] Since all Federal agency authority ultimately stems from the power to legislate conferred upon Congress by the Constitution, under Scenic Rivers' test *every* Federal agency action—no

[6] *Hearings on S. 1075, S. 237, and S. 1752 Before the Senate Committee on Interior and Insular Affairs,* 91st Cong., 1st Sess. at 121 (1969) (Emphasis supplied).

[7] Resp. Brief at 45.

matter how limited—would be *per se* major and require a written environmental impact statement. Looking at the quoted language another way, it fails to recognize that Congress does not, of course, always delegate all of its Constitutional power in a field to a Federal agency. In this case the language of ILSA and its legislative history make it clear that ILSA was enacted as a full disclosure law, not a regulation of land development law. As Senator Williams, the chief sponsor of ILSA, said during the Congressional debates on the bill:

> "It is *not* a regulatory statute which will permit the Federal Government to *pass upon* such questions as land value, its selling price, land use, or zoning. *The only purpose* of this legislation is to give the purchaser the necessary information upon which he can make his own investment decision."[8]

In enacting ILSA, Congress could have gone to the limit of its authority under the commerce clause. It chose not to do so.

In the same vein Scenic Rivers argues that there is major Federal action because first, ". . . H.U.D.'s action is a regulatory action which, if not taken, will mean that a particular filing or development will never be able to be sold in Interstate Commerce"[9] and second, if sales in interstate commerce are not permitted

[8] 114 Cong. Rec. 15272 (1968).

[9] Scenic Rivers ignores the fact that if HUD takes no action at all when a statement of record is filed under ILSA, the statement of record automatically becomes effective in 30 days, allowing sales in interstate commerce to occur.

no environmental impact will occur.[10] This ignores the crucial point that under ILSA HUD can only block access to interstate commerce for one reason: the statement of record is incomplete or inaccurate on its face. HUD cannot consider any other factor, such as the nature or extent of the environmental impact of the development. Thus, HUD is without authority to make any decision for which an environmental impact statement is necessary. Since an environmental impact statement is not necessary, it cannot be required under § 102(2)(C).

Scenic Rivers sets up the straw-man that HUD has no discretion and then devotes substantial argument to show why that is a "myth". By doing so, Scenic Rivers impliedly recognizes that the nature and extent of a Federal agency's discretion is meaningful under § 102(2)(C) in considering whether an environmental impact statement must be prepared. Scenic Rivers states that the Secretary of HUD has discretion to

(1) "require additional documentation and certification in the *statement of record* under 15 USC § 1705(12) for the protection of purchasers",

(2) "determine that a material fact has been omitted which is necessary to make the *statement* not misleading under the circumstances",

(3) "suspend after the effective date of the *statement of record*, if it omits a material fact *she thinks* is necessary to make the statement not misleading" and

(4) "require certain information in the *property report* . . . because she feels it necessary to pro-

[10] Resp. Brief at 43 and 7. Scenic Rivers would have the Court hold that any amount of statutory authority over access to interstate commerce—however small and regardless of its nature—constitutes major Federal action each time it is, or even could be, exercised.

> tect the purchaser and the public interest, and she may make rules and regulations to so order."[11]

An examination of this discretion, however, demonstrates the merit of a central point in petitioner Flint Ridge Development Company's (Flint Ridge) argument: HUD's discretion is limited to insuring anti-fraud disclosure in the documents filed with it. More importantly HUD has no discretion over the development activities that affect the environment.

HUD's discretion with respect to disclosure should not be examined in a vacuum. It should be considered in contrast to the purpose of § 102(2)(C). The environmental impact statement requirement is triggered and is only meaningful when a Federal agency has discretion to decide whether and to what extent an activity may affect the environment.[12] An environmental impact statement gives the Federal agency an informed basis for making the decision. Because HUD has no authority to decide whether or to what extent Flint Ridge may affect the environment, the preparation of an environmental impact statement would be a mean-

[11] Resp. Brief at 52-53 (Emphasis supplied).

[12] Scenic Rivers claims that "[t]he action in this case was the *decision* to allow the developer to proceed in interstate commerce by the issuance of a letter of compliance with ILSA." Resp. Brief at 31-32. HUD issues no "letter of compliance with ILSA." The letter apparently referred to by Scenic Rivers is reprinted in Appendix A of this reply brief. It says that Flint Ridge's filing "became" effective. That is of course consistent with § 1706(a) of ILSA which provides that filings automatically become effective in 30 days unless they are either suspended or their effective dates are accelerated by HUD. HUD's "decision"—such as it was—was that since the amended statement of record did not appear to be incomplete or inaccurate on its face, there was no reason to wait until the automatic 30-day effective date.

ingless exercise for HUD that is irrelevant to its statutory function and responsibility.[13]

The State of California recognizes that HUD's discretion under ILSA is limited to disclosure in the statement of record. It suggests, however, that "NEPA introduces an element of discretion into agency decision-making that was not previously there" to provide HUD discretionary authority over any private development activity.[14] NEPA, however, cannot expand HUD's statutory authority from the documents to land development activities. To do so would contradict the intent of Congress that the Federal Government not become involved in land use or the merits of developments through the back door by way of ILSA. The Court made it clear in *United States* v. *Students Challenging Regulatory Agency Proce-*

[13] Scenic Rivers also states that the arguments put forward by the Law Enforcement Assistance Administration (LEAA) in *Ely* v. *Velde*, 451 F.2d 1130 (4th Cir. 1971) that it lacked discretion to deny a *grant* were "rejected", thus implying that the argument on the limits of HUD's discretion should similarily be rejected here. Resp. Brief at 47. In *Ely* v. *Velde*, however, the organic statute, the Omnibus Crime Control and Safe Streets Act of 1968, provided that:

> "The [LEAA] shall make *grants* under this chapter to a State planning agency *if* such agency has on file with the [LEAA] an *approved comprehensive* State plan . . . which conforms with the purposes and requirements of this chapter." 42 U.S.C. § 3733(a) (Emphasis supplied).

Moreover, the Fourth Circuit found that under that organic statute the agency could impose conditions on the making of a federal *grant* to fund the construction of a non-federal penal facility. 451 F.2d at 1135 and 1137. In the instant case HUD has no discretion to impose conditions upon the effectiveness of a statement of record based upon the environmental impact of the development. Furthermore, HUD cannot fund developments under ILSA.

[14] Amicus Brief of State of California at 7 n.4.

dures[15] that NEPA does not expand jurisdiction conferred by existing statutory authority:

> "The statutory language, in fact, indicates that NEPA was not intended to repeal by implication any other statute. Thus, 42 U.S.C. § 4335 specifies that '[t]he policies and goals set forth in [NEPA] are supplementary to those set forth in existing authorizations of Federal agencies,' and 42 U.S.C. § 4334 instructs that the Act 'shall [not] in any way affect the specific statutory obligations of any Federal agency. . . .' "[16]

Since NEPA cannot expand HUD's statutory authority to encompass land development activities and since HUD makes no decision for which an environmental impact statement is necessary, HUD cannot be required to prepare an environmental impact statement under § 102(2)(C) of NEPA.

III. Disclosure for Investors and Disclosure for Agencies

Scenic Rivers relies on *NRDC* v. *SEC*[17] to support its position that HUD is required to prepare an environmental impact statement for filings under ILSA. Scenic Rivers gives a misleading impression of the holding in that case when it states

> "[n]otwithstanding the so-called 'automatic' effective dates, the Court in *N.R.D.C.* v. *S.E.C.* (D.C. D.C., 1974) 389 F.Supp. 689, stated in effect that the S.E.C. had to comply with NEPA."[18]

[15] 412 U.S. 669 (1973).

[16] *Id.* at 694.

[17] 389 F.Supp. 689 (D. D.C. 1974).

[18] Resp. Brief at 72.

Scenic Rivers uses this description of the case as authority for the notion that § 102(2)(C) of NEPA overrides the requirement of ISLA that (absent a finding that a statement of record is incomplete or inaccurate on its face) the statement shall become effective 30 days after it is filed with HUD. This is urged notwithstanding the one or more years required to prepare an environmental impact statement. *NRDC* v. *SEC*, however, had nothing whatsoever to do with the effective date of registration statements filed under the Securities Act of 1933 ('33 Act), 15 U.S.C. § 77a *et seq.* or with environmental impact statements at all. Thus, the statutory provision and considerations at issue in the instant case were not even present in *NRDC* v. *SEC*.

In *NRDC* v. *SEC* the NRDC petitioned the SEC for a rulemaking to require disclosure of environmental information by *private persons* filing with the SEC—not preparation by the *agency* of an environmental impact statement on each filing.[19] The District

[19] In the rulemaking proceeding by the SEC which followed the District Court's opinion, NRDC made its position clear in a letter to Ray Garrett, Jr., Chairman of the SEC, dated June 4, 1975 in n. 11, pp. 8-9.

> "A number of industry comments objected to the disclosure proposals set out in the Release on the grounds that they would require preparation of a National Environmental Policy Act (NEPA) Section 102(2)(C) environmental impact statement, or its equivalent, and that they would require registrants and the Commission to comply with that section's requirements. . . . These objections appear to be largely a play on words. In effect, the argument runs, that just because we request that the Commission 'to the fullest extent possible' (*see* NEPA Section 102) require disclosures about the impact of corporate operations on the environment, so would we necessarily involve the Commission in the problems that an

Court had no occasion to address the environmental impact statement requirement of § 102(2)(C) or the impact of requiring such statements on the 20 day effectiveness provision of the '33 Act as it applies to registration statements. The District Court held only that "[t]he SEC failed to comply with the *procedural requirements* of the APA [Administrative Procedure Act] in adopting rules which fulfill NEPA [§§ 102(1) and 102(2)(G)] . . . ."[20]

Scenic Rivers asserts that "[a]ll three of these Acts [the '33 Act, ILSA and NEPA] require full disclosure of information to vouchsafe rational choice, whether that choice is to be made by the individual, or society through its appointed, but sometimes balky servants, the Federal agencies."[21] In its assertion,

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agency like the Atomic Energy Commission has in deciding whether to issue a license for construction of a nuclear power plant based on NEPA considerations. One might just as well argue that Commission insistence upon disclosure by a utility company of financial data (such as its property assets and annual earnings), which would bear on its potential vulnerability to action by a state authority regarding the utility's rates (by, for example, revealing the existence of 'write-ups' in the utility's property account or a relatively high rate of return), involves the Commission in trying or resolving the state rate case.

"Insofar as these industry objections involve a legal concern that registrants, in making environmental disclosures similar to those set out in the Release if so required by Commission rules, would have to comply with Section 102(2)(C) of NEPA, *it should be clear from all of our submissions that it is not our position that registrants, in making such disclosures, would have to comply with Section 102(2)(C) of NEPA or that the requirements of that section would apply to industry activities.*" (Emphasis supplied).

[20] 389 F.Supp. at 702 (Emphasis supplied).

[21] Resp. Brief at 18.

Scenic Rivers attempts to merge the types of disclosure required by the three Acts, despite their differences: Section 102(2)(C) of NEPA was enacted to provide for informed choice by *agencies*, taking environmental considerations into account, in their decision-making (agency disclosure); ILSA and the '33 Act were designed to provide for informed choice by *investors* in their making of investments (investor disclosure). That difference is crucial in this case, since HUD has no choice to make on the environmental effects of the development.

Despite Scenic Rivers' misuse of the decision, *NRDC* v. *SEC* does provide a good example of one court's view of the possible *non*-section 102(2)(C) NEPA requirements of an agency in the context of a basic disclosure statute. The District Court stated:

> "[s]uperimposed upon this grant to the SEC of broad *rulemaking* authority is the Congressional mandate to the federal agencies which is contained in NEPA; that is, NEPA gives specific content to the SEC's authority under the securities laws to require disclosure in registration statements of information 'in the public interest'."[22]

In fact, the NRDC was ultimately seeking to broaden investor disclosure by '33 Act registrants (not agency disclosure by the SEC) to include the disclosure by them of substantive environmental information such as the environmental effects of plant operations and activities.[23] Scenic Rivers could have filed a similar request that HUD require, under ILSA and, for example,

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[22] 389 F.Supp. at 695 (Emphasis supplied and footnote omitted).

[23] 389 F.Supp. at 692.

NEPA § 102(1), the disclosure of substantive environmental information by developers registering under ILSA, such as the environmental effects of subdivision developments. This suggested approach, while directed toward the basic purpose of wide dissemination of information, would *not* require HUD to prepare a detailed environmental impact statement on each development as described in § 102(2)(C) of NEPA.

The *amicus curiae* brief of the State of California emphasizes the importance of investor disclosure. While it sees § 102(2)(C) as the basic route to provide this disclosure, it also recognizes alternatives when it states at 13:

> ". . . prospective purchasers of subdivision developments sold interstate have a right and responsibility to know whether their investment in such developments would contribute to unnecessary degradation of environmental quality. NEPA and ILSA's purposes can be effectively harmonized by requiring the Secretary to provide information on potential environmental impacts of subdivision developments in the form of an EIS *or otherwise*, to prospective purchasers so that concerned citizens may elect not to purchase developments that are unnecessarily destructive of environmental quality."[24]

Reliance on § 102(2)(C), however, is not only unnecessary to the result sought by California but is also not well-founded, since that section of NEPA is designed to produce a decision-making document for use by Federal agencies whenever, and only whenever, they take "major Federal actions significantly affecting the quality of the human environment."

[24] (Emphasis supplied).

Agency disclosure should not be confused with investor disclosure. Since HUD has no decision to make on the merits of a proposed development, the preparation of an environmental impact statement by HUD becomes a futile exercise in terms of its responsibilities under its organic statute.[25] The proper route, of course, toward HUD's requiring additional investor disclosure by developers filing under ILSA is a Petition for Rulemaking, a procedure which Scenic Rivers never even attempted.

Scenic Rivers also misconstrues the reach of § 103 of NEPA and its applicability to this case. This

[25] The points raised by the States of New Mexico and California that NEPA § 102(2)(G) imposes environmental impact disclosure requirements despite "HUD's lack of power under ILSA to act in regard to environmental consequencies," (Amicus Brief of State of New Mexico at 3) are a bootstrap attempt to use § 102(2)(G) of NEPA as a separate basis for the requirement in § 102(2)(C) to prepare an environmental impact statement. These arguments do not find support in the legislative history. First, the predecessor of § 102(2)(G) was present in the original version of S. 1075. Since this version did not include the environmental impact statement requirement of § 102(2)(C), there is no necessary dependence of § 102(2)(G) on the environmental impact statement requirement for its validity. Second, the Senate Report No. 91-296, 91st Cong., 1st Sess. 9 states that the predecessor of § 102(2)(G) authorizes "all agencies of the Federal Government, *in conjunction with their existing programs and authorities*, to conduct research, studies, and surveys relating to ecological systems and the quality of the environment. This section also authorizes the agencies to make this information available to the public, to assist State and local government, and to utilize ecological information in the planning and development of resource-oriented projects." (Emphasis supplied). It was never intended to serve as an independent basis for an environmental impact statement. Moreover, § 102(2)(G) does not say anything about a detailed environmental impact statement being prepared. It merely authorizes agencies to make "information" from "research, studies and surveys" available to the public.

section required agencies to review their existing statutory authority in order to determine whether there were any deficiencies or inconsistencies which prohibited full compliance with the provisions of NEPA. In the context of the instant case, § 103 would have applied only if HUD had determined that its checking of statements of record under ILSA was major Federal action significantly affecting the environment and that it was prohibited by ILSA from preparing a detailed environmental impact statement in the light of the mandatory 30-day effective date. In that purely hypothetical situation, HUD would have gone to the President with a proposal to reconcile the conflict between the statutes. However, given the legislative intent as to the purpose of disclosure documents under ILSA and HUD's lack of authority with respect to land developments, HUD did not consider the filings under ILSA to involve major Federal actions and § 103 of NEPA was thus inapplicable in the circumstances.

IV. HUD's Compliance with Its Environmental Regulations

Scenic Rivers accuses HUD of not following its own rules [26] because filings under ILSA are not specifically exempted from the environmental clearance procedures. Scenic Rivers conveniently ignores section 1 of the Handbook: "[t]he Handbook applies to HUD legislative proposals, policy and guidance documents . . . and individual project approval actions on insurance, loans and grants, subsidies and demonstration projects." [27] Filings under ILSA do not fall

[26] HUD Departmental Handbook, 38 Fed. Reg. 19182 *et seq.*, as amended 39 Fed. Reg. 38922.

[27] 38 Fed. Reg. 19182.

within any of these categories. Thus, by its own terms, the Handbook does not apply to disclosure filings under ILSA. Moreover, HUD has never considered filings under ILSA to be major Federal actions triggering the applicability of § 102(2)(C).[28]

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below, to the extent that it affirms the judgment of the District Court, should be reversed.

Respectfully submitted,

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[28] *See* memorandum from David O. Meeker, Jr., HUD, Assistant Secretary, Community Planning and Development, reprinted in Appendix B to this reply brief.

APPENDIX

APPENDIX A

OFFICE OF INTERSTATE LAND SALES REGISTRATION
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20411

2 May 1974

In Reply Refer To:
Deal

Mr. Thomas A. McMullen
5555 East Skelly Drive
Tulsa, Oklahoma 74135

Dear Mr. McMullen:

Subject: OILSR No. 0-3665-42-60, Flint Ridge Development Company, Flint Ridge No. 1, Filed February 5, 1974, Amendment filed April 26, 1974

Pursuant to Section 1407(a) of the Interstate Land Sales Full Disclosure Act the Statement of Record of the captioned subdivision became effective May 2, 1974. This letter has no retroactive effect upon your operation or sales, if any, made prior to your registration with this Office.

If you have not already done so, you should furnish this Office, within 20 days, the final printed version of the contract and Property Report * so that such documents may become part of the filing. The effective date indicated above must appear on the face of the Property Report.

As provided in Section 1407(c) of the Act, if at any time subsequent to the above effective date a change shall occur affecting any material fact required to be contained in the

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* The Property Report shall be in accordance with Section 1710.110 *Additional Requirements For Property Report*, subparagraphs "a" and "b." It shall begin with the words "Property Report" and shall be verbatim to that found effective with this Office. Also, it shall have no covers, pictures, emblems, logograms, or identifying insignia other than that set forth in the Regulations.

Statement of Record, the Statement shall be amended to show such change. Section 1710.23 of the regulations requires that such amendment be filed within 15 days of the date on which the developer knows or should have known that there has been a material change.

Under Section 1407(d) of the Act, if it appears to the Secretary that an effective Statement of Record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, such Statement of Record may be subject to suspension proceedings.

Any questions in regard to the subject matter of this letter should be addressed to this Office.

Sincerely,
George K. Bernstein
Interstate Land Sales Administrator

/s/ JOHN R. MCDOWELL
By John R. McDowell
Deputy Administrator

APPENDIX B

MEMORANDUM

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Date: 15 May 1974
In Reply Refer To:

To : George K. Bernstein
Interstate Land Sales Administrator

From : David O. Meeker, Jr.
Community Planning and Development

Subject: Applicability of HUD Handbook 1390.1 to Interstate Land Sales Registration

There have been a number of questions as to the applicability of HUD Handbook 1390.1 on "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality" to the registration of individual land developments sold in interstate commerce.

Handbook 1390.1 does not explicitly exempt the registration actions from provisions of the Handbook based on the determination that they are not "major Federal actions significantly affecting the quality of the human environment." Neither is the OILSR program listed as proposed HUD actions which require Special Environmental Clearance or Environmental Impact Statements. In the table covering these levels of environmental clearances, it is stated that "for programs not listed, consult the Assistant Secretary for Community Planning and Development".

It is our intent that individual land sales registrations be included in the list of activities which are fully exempted from environmental reviews. I want to state that this position was always the intent of this office and its predecessors in administering HUD's responsibilities under NEPA.

Failure to reflect this position adequately in the Handbook was an administrative oversight.

It is my understanding that the Interstate Land Sales Full Disclosure Act does not give HUD discretionary authority to disapprove proposed land developments that fully disclose the required information because of the quality of the subdivision. Rather, it provides that developers must register developments for which land is to be sold in interstate commerce with HUD by filing a full disclosure of the relevant facts about the property, and provide this information to prospective purchasers. HUD can act to prevent a developer from selling land only if the developer does not register and file the required disclosure. Simple disclosure of the facts obviously has no effect on the quality of the environment in an individual subdivision.

In light of the responsibilities of this office on environmental matters and to correct an oversight in HUD environmental policies in reference to the registration programs, I would conclude that individual registration should be exempted from environmental clearances and the final codified regulations, now in preparation, will reflect this determination.

/s/ David O. Meeker, Jr
Assistant Secretary